IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3009 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHABEN VIKRAMBHAI DESAI & 2 - Appellant(s)
Versus
BALIRAMSINGH DIPANSINGH RAJPUT (DELETED) & 2 - Defendant(s)

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Appearance :
MR.HIREN M MODI for Appellant(s) : 1 - 3.
None for Defendant(s) : 1,
NOTICE SERVED BY DS for Defendant(s) : 2,
MR AJAY R MEHTA for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 08/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and order dated 9.5.2006 of the Motor Accident Claims Tribunal (Aux.), Surat in MAC Petition No.339 of 1992 for enhancement of the compensation awarded by the Tribunal.

2. On account of the injuries received in a motor vehicle accident, a seven year old girl Mayuri-daughter of appellant Nos.1 and 2 herein and younger sister of appellant No.3 herein, lost her life. Her parents and the elder brother filed the above-numbered claim petition for compensation of Rs.1,50,000/-. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988.

3. The Tribunal held that the accident was caused by the negligence of the driver of the vehicle involved in the accident. Since the deceased was a seven year old child, and was only a passenger in one of the two vehicles involved in the accident, it is not necessary to go into the question of negligence in this appeal filed by the original claimants.

4. As regards the quantum of compensation, the Tribunal made an award of only Rs.75,000/- on the ground that the deceased was a seven year old girl. The claimants have, therefore, filed this appeal for

additional amount of Rs.85,000/-.

5. We have heard Mr Ajay Pandav for Mr Hiren Modi for the appellants and Mr Sunil B Parikh for Mr Ajay R Mehta for respondent No.3-New India Assurance Co. Ltd.. Respondent No. 2 is served.

6. Since the accident in question took place in the year 1992, the question of invoking the provisions of Section 163A would not strictly arise because Section 163A was inserted in the year 1994 w.e.f. 14.11.1994. However, the structured formula contained in the Second Schedule to the Motor Vehicles Act, 1988 read with Section 163A of the Act can safely be relied upon as a guideline for determining the amount of compensation.

7. On that basis, the learned advocate for the appellants has submitted that even in case of a minor, the Tribunal ought to have assessed the notional income of the deceased girl at Rs.15,000/- per annum and applying multiplier of 15 years and deducting one-third amount therefrom as the amount which the deceased would have spent on herself had she survived, the Tribunal ought to have made an award of Rs.1,50,000/- under the head of loss of dependency benefit and ought to have awarded a further sum of Rs.10,000/- under the conventional head of loss to the estate.

8. Mr Sunil B Parikh for the Insurance Company

has opposed the appeal and submitted that the application was under Section 166 of the Act and the Tribunal has committed no error in making an award for Rs.75,000/- in case of a seven year old girl who was obviously not earning anything.

9. In view of the decision of the Apex Court in **Kaushnuma Begum vs. New India Assurance Co., 2001(1) GLR 593 (Para 22)**, we are of the view that even though the accident took place in the year 1992, when the claim petition came to be decided in May 2006, the Tribunal could have referred to the Second Schedule to the Motor Vehicles Act, 1988 at least for the limited purpose of looking at the legislative guideline for assessing notional income of such minor children. Hence, we find considerable substance in the submission of the learned advocate for the appellant-claimants that the notional income of the deceased was required to be assessed at Rs.15,000/- per annum. Proceeding on that basis, we find no reason not to accept the appellants' claim for total award of Rs.1,60,000/- i.e. Rs.1,50,000/- as loss of dependency benefit and Rs.10,000/- as the conventional amount for loss to the estate. We make it clear that the learned advocate for the appellants has made submissions only for claiming total compensation amount of Rs.1,60,000/- and not any higher amount.

10. The Tribunal has awarded interest at the rate of 9% per annum from the date of the claim

petition till realization. We see no reason to award any lower rate of interest on the additional amount being awarded as per this judgment.

11. In view of the above discussion, the appeal is allowed. The award made by the Tribunal is modified by enhancing the amount of compensation from Rs.75,000/- to Rs.1,60,000/-. On the additional amount of Rs.85,000/- also, the respondents shall pay interest at the rate of 9% per annum from the date of the claim petition till the date of deposit. The respondents shall also pay proportionate costs of this appeal to the appellants.

Respondent No.3 shall deposit before the Tribunal the amounts being awarded as per this judgment towards compensation and interest by 8th December 2006. Upon deposit of the amounts, the Tribunal shall pass appropriate orders for investment and disbursement.

(M.S. SHAH, J.)

(AKIL KURESHI, J.)

zgs/-